

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

J.D

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/213,544 12/17/98 NARDI

J EVE01-P-565-

IM22/0410
EVEREADY BATTERY COMPANY, INC.
PRICE HENEVELD COOPER DEWITT & LITTON
25225 DETROIT ROAD
P.O. BOX 450777
WESTLAKE OH 44145

EXAMINER

CHANAY, C

ART UNIT	PAPER NUMBER
----------	--------------

1745

DATE MAILED:

04/10/01

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 13

Application Number: 09/213,544
Filing Date: December 17, 1998
Appellant(s): NARDI, JOHN C.

MAILED
APR 10 2001
GROUP 1700

Kevin T. Grzelak
For Appellant
EXAMINER'S ANSWER

MAILED
APR 10 2001
GROUP 1700

This is in response to appellant's brief on appeal filed January 16, 2001.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

Art Unit: 1745

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-13 and 15-21 stand or fall together

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,482,798	Mototani et al.	1-1996
-----------	-----------------	--------

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Art Unit: 1745

1. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mototani et al. (US Patent 5,482,798). Applicant's invention is essentially directed to alkaline batteries with cathodes containing manganese dioxide and expanded graphite. Mototani et al. disclose alkaline manganese batteries containing manganese dioxide and expanded graphite. (Note column 3, lines 40-52.)

The disclosure of Mototani et al. differs from applicant's independent claim in that Mototani et al. do not disclose kerosene absorption values. Additionally, with regards to the instant dependent claims, Mototani et al. do not disclose surface areas or densities of expanded carbon particles used, and do not disclose the identical expanded graphite particle size ranges and distributions claimed by the appellant.

It is noted that both Mototani et al. and the appellant form expanded graphite by introducing sulfuric acid into graphite and then rapidly heating the graphite to about 1000°C. (Compare Mototani et al., column 3, lines 44-50 and applicants' specification, page 8, line 8-page 9, line 10.) Because the processes for forming expanded graphite disclosed by the appellants and the prior art are similar, the materials produced will be similar, and thus have similar physical properties, including kerosene absorption values.

(11) Response to Argument

Appellant characterizes his inventive expanded graphite by its kerosene absorption value and argues the prior art of Mototani et al. does not necessarily disclose expanded graphites with kerosene absorption values within the claimed range. However, the prior art of Mototani et al. teaches expanded graphites may be formed

Art Unit: 1745

from a variety of graphitic starting materials including artificial graphite, naturally occurring graphite and flaky graphite. (Note Mototani et al., column 5, line 24-column 6, line 3.) Appellant has failed to show distinctions between the expanded graphites disclosed by Mototani et al. and those of the instant invention. Appellant has shown commercially available expanded graphites with kerosene absorption values outside the instant claimed ranges can be obtained. However, this fails to establish kerosene absorption values for the expanded graphites disclosed by Mototani et al. The processes by which the commercially available expanded graphites are formed are not known, and therefore parameters of the commercially available graphite and the expanded graphites disclosed by Mototani et al. cannot be related. Thus, appellants' declaration does not establish parameters of the expanded graphites disclosed by Mototani et al. The record fails to show any distinctions between the expanded graphites disclosed by Mototani et al. and the appellants' expanded graphites. Appellant's claims are not distinguished from the prior art of Mototani et al.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Carol Chaney
Primary Examiner
Art Unit 1745

cc
April 9, 2001

EVEREADY BATTERY COMPANY, INC.
PRICE HENEVELD COOPER DEWITT & LITTON
25225 DETROIT ROAD
P.O. BOX 450777
WESTLAKE, OH 44145